

Executive Summary Form

Agenda Number: HLT-- (ADHS Delegation Agreement, 12/2/10)

Recommendation:

This is to request your approval of the Cochise County Health Department's amended Delegation Agreement with the Arizona Department of Health Services (ADHS). This amendment delegates to the Cochise County Health Department the responsibility of conducting food service inspections at the County Jail and Detention Centers and extends the agreement to June 30, 2017. The previous delegation agreement expired June 30, 2010.

Background (Brief):

The Environmental Health Division of the Health Department is the entity which carries out the health and environmental inspections for the State in Cochise County under the authority delegated to Cochise County by the ADHS. Selected delegated functions from the State to Cochise County fall under areas of Food Service, Public Swimming Pools, Public Schools, Public Accommodations and RV Parks. Also delegated is the authority to collect fees that are established by the BOS.

Fiscal Impact & Funding Sources:

The additional mandated inspections would be funded through fees charged to the company that has the contract for food service at the jail. No fiscal impact to the County.

Next Steps/Action Items/Follow-up:

Your approvals are respectfully requested.

Impact of Not Approving:

Not approving this Delegation Agreement will leave the ADHS without a local agent in Cochise County to whom it can delegate its duties and authorities under ARS 36-182. The State requires the County's assistance in this regard. Additionally, without this delegation agreement sanitary inspections of restaurants, public accommodations, public swimming pools and public schools would not take place in Cochise County.



Division of Operations

Office of Procurement

1740 West Adams Street, Room 303
Phoenix, Arizona 85007-2670
(602) 542-1040
(602) 542-1741 Fax

JANICE K. BREWER, GOVERNOR
WILL HUMBLE, DIRECTOR

November 17, 2010

Ms. Vaira Harik, County Health Director
Cochise County Health Department
1415 West Melody Lane, Building A
Bisbee, Arizona 85603

RE: Amendment to Delegation Agreement

Dear Ms. Harik,

Enclosed please find two (2) copies of an Amendment to the Delegation Agreement between the Arizona Department of Health Services (ADHS) and Cochise County Health Department. Please review and secure signatures on page six (6) as noted.

Upon signature, please return both copies to my attention for execution by ADHS.

Please call me at (602) 542-0442 or email at Christine.Ruth@azhds.gov if you have any questions.

Sincerely,

A handwritten signature in dark ink that reads "Christine Ruth". The signature is written in a cursive, flowing style.

Christine Ruth
Acting Chief Procurement Officer

AMENDMENT
To
DELEGATION AGREEMENT
Between
ARIZONA DEPARTMENT OF HEALTH SERVICES
and
COCHISE COUNTY HEALTH DEPARTMENT

The Arizona Department of Health Services ("**ADHS**") is authorized by § 36-136(D) to delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the Director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district.

The Cochise County Health Department ("**CHD**") is a local health department as set forth in A.R.S. § 36-136(D) and may carry out delegated functions, powers, or duties.

A.R.S. § 11-201(A)(3) authorizes the County Board of Supervisors to enter into contracts as necessary to assist Cochise County in exercising its powers, and A.R.S. § 41-1081 establishes standards of delegation.

The Delegation Agreement ("**Agreement**") may be amended by mutual approval of both parties by executing and filing a written amendment signed by both parties containing the desired modifications.

Therefore the Director of ADHS delegates to the CHD, and the CHD agrees to accept the amended delegation of authority to perform those functions, powers, and duties described in Appendix A in accordance with the terms and conditions of this Amendment. Functions and duties in food and general sanitation control to be retained by ADHS are found in Appendix B.

A. RECORDS AND INSPECTIONS:

1. CHD agrees to prepare and maintain appropriate records relating to the administration of activities specified in this Amendment, and the Agreement thus amended.
2. ADHS representatives may accompany employees of the CHD on inspections and review all records relating to the administration of the activities set forth in this Amendment, and the Agreement thus amended. Where practicable, accompaniment by ADHS representatives on such inspections will be conducted with prior notice provided by ADHS and CHD. CHD representatives may accompany ADHS inspectors on ADHS inspections for the purposes of training, information sharing or to coordinate CHD and ADHS activities. ADHS representatives shall contact appropriate CHD staff to make necessary arrangements prior to inspections.

B. ENFORCEMENT ACTIONS:

1. CHD shall comply with all applicable rules of the State, and with all applicable county ordinances, rules and regulations adopted pursuant to A.R.S. § 36-136(H). CHD may enforce local regulations, which are consistent with and at least as restrictive as those of the State, in lieu of the State rules.
2. CHD shall be responsible for appropriate enforcement actions, including but not limited to, enforcement pursuant to the procedures set forth in A.R.S. § 36-601(B) and (C), for those functions, powers, and duties which are delegated in this Amendment, and the Agreement thus amended.
3. CHD shall respond to imminent health hazards which fall under the CHD's delegated functions, powers and duties. ADHS retains the authority to also respond to such imminent health hazards.
4. Unless an imminent health hazard exists, no enforcement actions on delegated activities will be initiated by the ADHS until such time as the CHD has received notice of said violations from ADHS and has had five (5) working days after receipt of notification to initiate appropriate enforcement action.

C. FEES AND FINES:

The CHD may set and collect fees and fines as authorized by A.R.S. § 36-187(C).

D. QUALIFICATIONS OF PERSONNEL:

CHD personnel performing delegated duties shall be qualified in accordance with A.R.S. § 36-136.01 and the A.A.C. Title 9, Chapter 16, Article 4, which govern sanitarians.

E. STANDARDS OF PERFORMANCE

1. CHD shall meet standards as outlined in statute and rules in Appendix A, Section (C), Delegated Responsibilities.
2. Reports are due to the ADHS Food Safety & Environmental Services Section annually in the format in Appendix C.

F. TERMINATION:

1. This Agreement may be terminated in whole or in part by either party, effective ninety (90) days after providing written notice of termination by certified mail to the other party.
2. CHD, prior to the termination of all or part of this Agreement, shall forward to the ADHS Director all pending applications received by the CHD for those functions, powers, and duties being terminated, a summary report of those functions, powers, and duties, and provide notification to all persons with pending applications and to all regulated facilities affected by such termination.
3. The provisions of A.R.S. § 38-511 et. seq. are incorporated herein by reference.

G. AMENDMENTS:

This Agreement may be amended by mutual approval of both parties by executing and filing a written amendment signed by both parties containing the desired modifications.

H. DISPUTES:

1. In the event of a dispute concerning a question of fact arising under this Amendment, and the Agreement thus amended, which cannot be resolved by the ADHS Project Director and CHD, the aggrieved or dissatisfied parties agree to use arbitration as required by A.R.S. § 12-133. Otherwise, within thirty (30) days after a written request for a hearing is filed, the ADHS Director shall hold a hearing presided over by a hearing officer who may be the ADHS Director or any qualified person or panel whom the ADHS Director may appoint to adjudicate the dispute. The hearing officer shall rule on all motions, hold conferences for the purpose of clarifying procedural steps or legal or factual issues, conduct the hearing, grant continuances and otherwise rule on procedural matters and regulate the course and manner of the hearing. All hearings shall be recorded. All testimony shall be under oath or affirmation. Within twenty (20) days after the conclusion of the hearing, the hearing officer shall prepare and circulate written findings of fact and conclusions of law and recommended decision(s). Each of the parties shall have five (5) days in which to respond. The hearing officer may revise or supplement his original findings, conclusions and recommended decision(s) in light of responses made or may submit his findings, conclusions and recommended decision(s) and copy of all responses to the ADHS Director along with a legible or audible copy of the record and all documentary evidence. The ADHS Director shall issue his findings of fact, conclusions of law and decision(s) in writing and furnish a copy to concerned parties. Pending final decision of a dispute, CHD shall proceed diligently with the performance of the Agreement and in accordance with the ADHS Director's decision(s).
2. Paragraph one (1), shall not preclude the ADHS Director from considering questions of law in connection with decisions made pursuant to paragraph one (1); likewise this Amendment, and the Agreement thus amended, shall not preclude an appeal of the ADHS Director's final decision on a question of law.

I. TERM OF AGREEMENT:

Pursuant to A.R.S. § 41-1081(E), this Amendment shall be effective thirty (30) days after written notice of ADHS' final decision (following the public comment period and hearing, if any) or the date the Amendment has been signed by both parties, whichever comes later. The termination date of this Amendment, and the Agreement thus amended is June 30, 2017. In the event a new Agreement is not executed by that date, the Agreement may be extended by mutual agreement by the parties by filing an amendment in accordance with A.R.S. § 41-1081.

ARIZONA DEPARTMENT OF HEALTH SERVICES

DIRECTOR

DATE

COUNTY HEALTH DEPARTMENT

DIRECTOR

DATE

COUNTY BOARD OF SUPERVISORS

CHAIRMAN

DATE

ATTEST

CLERK OF THE BOARD

DATE

APPENDIX A
FOOD AND GENERAL SANITATION CONTROL

A. PRIMARY CONTACT PERSONS:

1. The name and address of the primary contact person for the Cochise County Health Department is as follows:

Name: Vaira Harik
Title: County Health Director
Cochise County Health Department
Address: 1415 W Melody Lane, Bldg. A
Bisbee, AZ 85603
Telephone: 520.432.9472

2. The name and address of the primary contact person for the Arizona Department of Health Services is as follows:

Name: Diane Eckles, Chief
Division: Office of Environmental Health
Arizona Department of Health Services
Address: 150 N 18th Ave, Ste 140
Phoenix, Arizona 85007
Telephone: 602.364.3142

B. REPORTING:

The CHD shall submit to the Manager, Food Safety & Environmental Services Section, ADHS, 150 N 18th Ave, Suite 140, Phoenix, Arizona, 85007, a fiscal year ending June 30th annual report by September 1st on forms provided by ADHS, Appendix C, and copies of any legal action initiated by the County within thirty (30) days of initiation.

C. DELEGATED RESPONSIBILITIES:

Cochise County Health Department agrees to perform the following functions and duties:

Delegated Functions and Duties

Applicable Rules and Statutes		Personnel Qualifications	Standards of Performance
Bathing Places	A.R.S. §§ 36-132(A)(12), 36-136(A)(6), and 36-136(D). A.A.C. Title 9, Chapter 8, Article 8.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Bottled Water manufacturers	A.R.S. §§ 36-132(A)(13), 36-136(A)(6), and 36-136(D). A.A.C. Title 9, Chapter 8, Article 2.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Campgrounds sanitation	A.R.S. §§ 36-136(A)(6) and 36-136(D). A.A.C. Title 9, Chapter 8, Article 6.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Childrens Camps	A.R.S. §§ 36-136(A)(6), 36-136(D), and 8-551 through 8-568. A.A.C. Title 9, Chapter 8, Article 4.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Food Establishments. State prisons, Behavioral Health Services and Department of Economic Security residential facility food establishments, are excluded.	A.R.S. §§ 36-136(A)(6) and 36-136(D). A.A.C. Title 9, Chapter 8, Article 1.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Hotel and Motel sanitation	A.R.S. §§ 36-136(A)(6) and 36-136(D). A.A.C. Title 9, Chapter 8, Article 13.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Public Nuisance Complaint responses.	A.R.S. §§ 36-136 and 36-601.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Pure Food Control investigations.	A.R.S. §§ 36-132(A)(14), 36-136(A)(6), and 36-136(D), and 36-901 through 36-916.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.

Applicable Rules and Statutes		Personnel Qualifications	Standards of Performance
Public Toilet Facilities and Special Events	A.R.S. §§ 36-136(A)(6) and 36-136(D). A.A.C. Title 9, Chapter 8, Article 3.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Public School sanitation	A.R.S. §§ 36-136(A)(6) and 36-136(D). A.A.C. Title 9, Chapter 8, Article 7.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.
Trailer Coach Park sanitation	A.R.S. §§ 36-136(A)(6) and 36-136(D). A.A.C. Title 9, Chapter 8, Article 5.	Registered Sanitarian, A.A.C. Title 9, Chapter 16, Article 4.	A.A.C. Title 9, Chapter 16, Article 4.

Pure Food Enforcement by County: Required Notice to ADHS:

In conjunction with the inspection and enforcement powers delegated, the CHD shall also administer and enforce those provisions of A.R.S. 36-901 through 36-916, excluding 36-915, which prohibit the manufacture, sale, holdings or delivery of adulterated and misbranded foods. Where adulterated or misbranded food is manufactured, sold, held, or delivered within Cochise County, and no portion of such manufacture sale, holding, or delivery occurs within any other county of the State, the CHD may take enforcement action without first notifying ADHS. However, if any portion of the manufacture, sale, delivery, holding, or offering for sale of adulterated or misbranded food occurs within any other county of the State, no enforcement action shall be initiated by the CHD until after such time as ADHS has received notice of said violation and has had an opportunity five (5) working days after notification to initiate such enforcement action at the ADHS level as ADHS may indicate it intends to commence. The CHD shall, in all emergency cases, give reasonably adequate notice to ADHS of the nature and extent of any violation of State statute or rule relating to adulterated or misbranded foods, and shall provide such additional information as ADHS may require in connection therewith.

APPENDIX B

ADHS RETAINED FOOD AND GENERAL SANITATION CONTROL

ADHS will be responsible for sanitation inspections of facilities not delegated to the CHD.

Appendix C
Food and General Sanitation Annual Report Form

Jurisdiction: _____ Fiscal Year: _____

Food Program Activity Categories:

	Complex	Moderate	Limited	Totals
Current Number of Food Establishments				
Number of Routine Inspections				
Number of Reinspections				
Number of Pre-Operational Inspections Performed				
Number of Food borne Illness (FBI) Complaints Evaluated/Investigated				
Number of Non-FBI Complaints Evaluated/Investigated				
Number of Compliance Proceedings (Conferences, Hearings, Court)				
Number of Food Items Detained/Embargoed				
Number of Temporary Food Establishment Inspections Performed				

Food Program Educational Services:

	Totals
Number of Presentations (Group Events)	
Number of Participants/Audience (Group Events)	
Number of Consultations/Counseling Provided	
Number of Media Contacts	

Sanitation Inspections and Other Programs:

	Number of Facilities	Number of Inspections	Number of Complaint Investigations	Number of Enforcement Actions
Public & Semipublic Bathing Places				
Trailer Coach Parks				
Public School Grounds				
Camp Grounds				
Childrens Camps				
Public Accommodations				
Bottled Water				

LETTER OF DETERMINATION

INTERGOVERNMENTAL AMENDMENT NO. _____

The Office of the County Attorney has determined that the Intergovernmental Amendment made between the:

ARIZONA DEPARTMENT OF HEALTH SERVICES

AND THE

COCHISE COUNTY HEALTH DEPARTMENT

is in proper form and is within the powers and authority granted under the laws of Arizona to the County Board of Supervisors (ref. A.R.S. 11-201).

EDWARD G. RHEINHEIMER

TYPED NAME OF COUNTY ATTORNEY

BY

A handwritten signature in black ink, appearing to read "Terry Bannon", is written over the signature line.

SIGNATURE OF COUNTY ATTORNEY/DESIGNEE

TERRY BANNON, CIVIL DEPUTY

TYPED TITLE OF SIGNATORY

12-13-10

DATE